

### **REMARKS/ARGUMENTS**

Claims 1–67 are pending in the captioned application.

The Examiner has required restriction under 35 U.S.C. § 121 of the following groups:

- I. Claims 1-50, drawn to a method of selecting a probe for a target nucleic acid sequence, classified in classes 435, 536, and 702, subclasses 6 24.3, and 20.
- II. Claims 52-54, drawn to a method of making an oligonucleotide array, classified in class 435, subclasses 6 and 287.2.
- III. Claims 55-61, drawn to a[n] oligonucleotide array, classified in class, subclass 287.2.
- IV. Claims 62-67 and 51, drawn to a method of analyzing the expression of a gene within a source, classified in class 435, subclasses 6 and 287.2.

Specifically, the Examiner states, “inventions in Groups I-IV are related as product and process of use...All of these usages are distinct as requiring distinct and different functions and results thereof without overlapping search due to different subject matter. This lack of overlapping searches documents the undue search burden if they were search together.”

In response, Applicants elect, without traverse, to prosecute the invention of Group I, namely, claims 1–50. Accordingly, claims 51–67 are withdrawn from

consideration. Applicants will cancel the unelected claims as soon as Notice of Allowability of the elected claims is received.

Applicants reserve the right to traverse the restriction of Groups II–IV should these claims be re-raised in a subsequent application.

The Examiner has also required an election of species as follows:

Species (A):

Species of target nucleic acid are cited in claims 2, 6, and 10, which are generally separately analyzed and published, and thus document the undue search burden if searched together. Thus, applicants are required to select an unspecified type of target nucleic acid or a type of target nucleic acid from those listed in claim 2, 6, and 10.

In response, Applicants elects, with traverse, the species in claim 2, namely cDNA. The traversal is based on Applicants' contention that the species are easily searched together, and such would not constitute an undue burden on the Examiner.

Species (B):

Species of sources of target nucleic acid are cited in claim 3, 14, and 15, which are generally separately analyzed and published, and thus document the undue search burden if searched together. Thus, applicants are required to select an unspecified type of source of target nucleic acid or a type of source of target nucleic acid from those listed in claim 3, 14, and 15.

In response, Applicants elect, with traverse, the species of claim 3, namely a mammalian cell. The traversal is based on Applicants' contention that searching the various types of DNA would not constitute an undue burden.

The Examiner has further required that a subspecies B1 be selected if a mammalian cells are selected in Species B. The Examiner states, "species of mammalian cells are cited in claims 4 and 5 , which are generally separately analyzed and published, and thus document the undue search burden if searched together.

In response, Applicants elect, with traverse, the subspecies of claim 5, namely human cells. The traversal is again based on the fact that Applicants do not believe that such would constitute an undue burden for search.

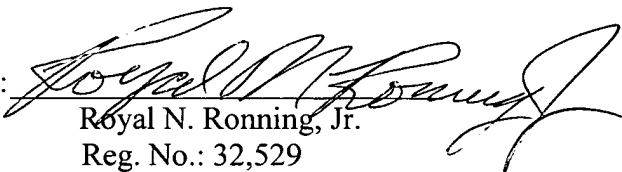
In summary, Applicants traversal is based on the fact that the species the Examiner has required election of can be easily and competently searched, and would not require an undue burden on the part of the Examiner or other searching authority. Accordingly, Applicants believe that it is improper to require the species election.

In view of the foregoing, Applicants believe that the claims, as elected, are in allowable form and earnestly solicit the allowance of claims 1-50.

Any questions with respect to the foregoing may be directed to Applicant's  
representative at the telephone number listed below.

Respectfully submitted,

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